

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RAHUL SHAH, M.D., *assignee of*
Karyn G.,

Plaintiff,

v.

WELLMARK BLUE CROSS BLUE
SHIELD,

Defendant.

HONORABLE NOEL L. HILLMAN

CIVIL ACTION NO. 16-2397

OPINION

APPEARANCES :

CALLAGY LAW, P.C.

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Counsel for Plaintiff

BECKER LLC

By: Michael E. Holzapfel, Esq.

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Counsel for Defendant

HILLMAN, United States District Judge:

This is one of many ERISA suits¹ filed by Plaintiff Dr. Rahul Shah, as purported assignee of his individual patients, against his

¹ The Court has federal question subject matter jurisdiction pursuant 28 U.S.C. § 1331, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

patients' various insurance companies.² In each suit, Dr. Shah asserts that the insurance companies wrongfully denied requests for payment of benefits under the patients' health insurance policies, and consequently, Dr. Shah's bills for services were not paid, or not fully paid.

Presently before the Court is Defendant Wellmark Blue Cross Blue Shield's Motion to Dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1)(standing), 12(b)(3) (improper venue), and 12(b)(6)(failure to state a claim). For the reasons stated herein, the motion will be granted to the extent that it seeks dismissal for improper venue based on the forum selection clause in the applicable plan document.

I.

On July 15, 2013, Dr. Shah allegedly performed back surgery on Karyn G. (Amend. Compl. ¶ 4-6; and Ex. A) He alleges all services were medically necessary and reasonable (Id. at ¶ 4-5), yet Karyn G.'s health insurance company, Defendant Wellmark Blue Cross and Blue Shield, allegedly underpaid the claim by \$114,704.07. (Amend.

² In addition to this case, three other such suits are pending before the undersigned, *Shah v. Horizon Blue Cross Blue Shield of New Jersey*, Docket No. 17-cv-0632, *Shah v. Blue Cross Blue Shield of Michigan*, Docket No. 17-0711, *Shah v. Horizon Blue Cross Blue Shield of New Jersey*, Docket No. 16-2397, and a fourth was dismissed by stipulation of the parties, *Shah v. Horizon Blue Cross Blue Shield of New Jersey*, Docket No. 16-2495. The Court's records reflect 12 other open cases in this District.

Compl. ¶ 16) Dr. Shah further alleges that he obtained an assignment of benefits from Karyn G. (Amend. Compl. ¶ 7)

It is undisputed that the applicable ERISA plan contains a forum selection clause: "To the extent not superseded by the laws of the United States, the group health plan will be construed in accordance with and governed by the laws of the state of Iowa. Any action brought because of a claim under this plan will be litigated in the state or federal courts located in the state of Iowa and in no other." (VonHagel Cert. Ex. A, p. 103)

The Amended Complaint asserts four claims: breach of contract; denial of benefits in violation of § 1132(a)(1)(B); breach of fiduciary duty in violation of § 1132(a)(3)(B); and failure to maintain a reasonable claims process pursuant to 29 C.F.R. 2560.503-1.

II.

Mandatory forum selection clauses are entitled to a presumption of enforceability. *See M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, (1972). The presumption can be overcome upon a demonstration of "extraordinary circumstances unrelated to the convenience of the parties" that clearly disfavor a transfer or dismissal. *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tx.*, 134 S. Ct. 568, 581 (2013).

III.

In opposition to Wellmark's argument that the forum selection clause should be enforced, Plaintiff asserts that the forum selection clause is unenforceable because it contravenes the "strong public policy of ERISA" which according to Plaintiff, favors honoring a participant's choice to pursue his claims in his home venue. (Opposition brief, p. 10)

While Plaintiff cites authority that arguably supports his argument, see *Dumont v. PepsiCo*, 192 F. Supp. 3d 209 (D. Me. 2016), the clear weight of authority rejects Plaintiff's argument. See *Smith v. Aegon Companies Pension Plan*, 769 F.3d 922, 931 (6th Cir. 2014) ("A majority of courts that have considered this question have upheld the validity of venue selection clauses in ERISA-governed plans.") (collecting cases), *cert. denied by* 136 S.Ct. 791 (2016); *Mathias v. Caterpillar, Inc.*, 2016 U.S. Dist. LEXIS 115314 at *17-18 (E.D. Pa. Aug. 29, 2016) (following *Smith*); *Feather v. SSM Health Care*, 2016 U.S. Dist. LEXIS 147558 at *12 (S.D. Ill. Oct. 25, 2016) (following *Smith* and declining to follow *Dumont*, stating that *Dumont* is an "outlier" that "other courts have declined to follow").³

Admittedly, there is room for disagreement on this issue. See *Smith*, 769 F.3d at 934 (Clay, Circuit Judge, dissenting); *Dumont*, 192 F. Supp. 3d at 221 ("I conclude that enforcement of the forum

³ Even *Dumont* acknowledged that "[t]he majority of district courts to address the issue have . . . held that forum selection clauses are permissible in the ERISA plan context." 192 F. Supp. 3d at 212.

selection clause would run afoul of the strong ERISA public policy in favor of ready access to the federal courts."). Absent binding precedent or other clear direction from the Court of Appeals for the Third Circuit, this Court adopts the reasoning and holding of *Smith*, 769 F.3d 922, 931 (6th Cir. 2014), *cert. denied by* 136 S.Ct. 791 (2016) and holds that the forum selection clause in this case is enforceable. Accordingly, Wellmark's Motion to Dismiss for improper venue will be granted.⁴

In light of the disposition of the venue issue, the Court need not address the other arguments raised by Wellmark in support of its Motion to Dismiss.

IV.

For the reasons set forth above, the Motion to Dismiss will be granted.

An appropriate Order accompanies this Opinion.

Dated: March 30, 2017

At Camden, New Jersey

____s/ Noel L. Hillman____
Noel L. Hillman, U.S.D.J.

⁴ The Court will dismiss, rather than transfer this suit, because dismissal is the relief requested by Wellmark and Plaintiff has not requested alternative relief. See *Salovaara v. Jackson Nat'l Life Ins. Co.*, 246 F.3d 289, 300 (3d Cir. 2001) ("we conclude that the District Court was not required to treat Lazard's motion for dismissal as a motion for transfer simply because the forum selection clause specified that suit be brought in either a federal or a state forum.").